IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.383/2006

Reserved on: 10.10.2007

Decided on.26.10.2007

State of H.P. and another. **…Petitioners.**

Versus

Bhuri Singh. **Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the petitioners : **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals.**

For the respondents **Mr. Surinder Saklani, Advocate.**

Rajiv Sharma, J.

A challenge has been laid to the award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala on 1.10.2005 in reference No. 67/2004.

The Brief facts necessary for the adjudication of this petition are that the State Government has made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the termination of services of Shri Bhuri Singh son of Sh. Sunder Singh, workman by the Divisional Forest Officer, Forest Division, Jogindernagar, District Mandi, H.P. w.e.f. 1.8.2000 without complying the provisions of the Industrial Disputes Act, 1947 and whereas junior to him are retained as alleged by the workman is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?"**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

In sequel to the reference made by the State Government, the respondent (hereinafter referred to as the workman for convenience sake) had filed his statement of claim. The workman had primarily contended before the Labour Court that he was engaged in two spells i.e. with effect 21.12.1987 to December, 1988 and thereafter with effect from August, 1998 to 31st July, 2000 and he had been disengaged from 1st August, 2000 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act for brevity sake). The employer had contested the claim of the workman by filing detailed reply to the statement of claim. The Labour Court on the basis of the oral as well as documentary evidence had answered the reference in affirmative on 1.10.2005.

The learned Advocate General had assailed the reference dated 1.10.2005 firstly on the ground that the workman was disengaged with effect from 1st August, 2000, but the reference has been made in the year 2004 and secondly on the ground that the workman had not completed 240 days in the calendar year preceding his disengagement and the Labour Court could not direct his reinstatement for

. violation of section 25 (G) and (H) of the Act.

Mr. Sureinder Saklani, Advocate appearing on behalf of the workman had supported the award dated 1.10.2005.

I have heard the learned counsel for the parties and perused the record.

The workman was engaged initially with effect from 21st December, 1987 to December, 1988 and thereafter he was again engaged with effect from August, 1998 and was permitted to discharge his duties upto 31st July, 2000. The workman had appeared as PW-1 before the Labour Court. He has testified before the Labour Court that persons junior to him

were retained while disengaging him from 1st August, 2000 and thereafter fresh recruitment was made but no notice was issued to him to rejoin his duties as per section 25 (H) of the Act. He also stated before the Labour Court that neither any notice was issued to him nor any retrenchment compensation was paid to him.

Mr. Surender Kumar, Deputy Ranger had appeared as RW-1 before the Labour Court on behalf of the employer. He had admitted in his statement that the persons junior to the workman were retained while disengaging his services with effect from 1st August, 2000. He had also admitted in his statement before the Labour Court that fresh recruitment was carried out after the disengagement of the petitioner on 1st August, 2000 but no notice was issued to the workman to rejoin his duties. The Labour Court on the basis of the statements of PW-1 and RW-1 had returned the correct finding that there was violation of section 25 (G) and (H) of the Act. The Labour Court had rightly directed the reinstatement of the workman with back wages to the extent of 25%.

Now, the Court has to consider the contention of the learned Advocate General with regard to delay in raising the industrial dispute. The workman was retrenched on 1st August, 2000. He filed an original application before the H.P. State Administrative Tribunal on 9.8.2000 bearing O.A. No. 308/2000, which was decided on 27.2.2002. The original application was dismissed for want of jurisdiction. The workman raised the demand on 3rd February, 2003. The Labour Inspector after the conciliation proceedings had failed recommended to the State Government to make a reference on 8th May, 2003. The State Government had made the reference in the year, 2004. In view of this there is no delay in raising the dispute by the workman and as such the submission made by the learned Advocate General is rejected.

The matter can be viewed from another angle. If the employer was aggrieved in any manner by the reference made by the State Government, the same should have been assailed in the appropriate forum. Since the employer admittedly had not challenged the reference made by the State Government it cannot assail this before the Court for the first time after the award has been made.

The Hon'ble Supreme Court in latest judgment in ***Karan Singh Versus Executive Engineer Haryana State Marketing Board***, 2007 (II) Scale 577 has held that the Labour Court is bound to decide the reference made by the State Government and the same is required to be adjudicated upon the merits without touching the aspect of delay and laches. Their Lordships have held as under:

> **"In the appeal the main issue which arises for determination is as follows:**
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> > **"Whether the reference of the Petitioner/workman could be rejected on the sole ground of delay when Government itself made reference for adjudication of the issue/ dispute."**
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> **In the case of Management of Express Newspapers (Private) Ltd. v. The Workers and Ors. reported in (AIR 1963 SC 569) it has been held that the jurisdiction of the Tribunal in dealing with industrial disputes is limited to the points mentioned in Section 10(4).**
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> **In the case of National Engineering Industries Ltd. v. State of Rajasthan and Ors. (2000) 1 SCC 371) it has been held vide para 24 that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10. This is because existence of the industrial dispute is a jurisdictional fact. Absence of such jurisdictional fact results in the invalidation of the reference. For example, even under the Income Tax Act, 1961 as it stood earlier, the Income Tax Officer must have reason to believe escapement of income.**

This "reason to believe" is a jurisdictional fact, therefore, writ petitions were maintainable in cases where the High found absence of basic facts for reopening the assessment. The industrial Tribunal under Section 10 gets its jurisdiction to decide an industrial dispute only upon a reference by the appropriate government. The Industrial Tribunal cannot invalidate the reference on the ground of delay. If the employer says that the workman has made a stale claim then the employer must challenge the reference by way of Writ petition and say that since the claim is belated, there was no industrial dispute. The Industrial Tribunal cannot strike down the reference on this ground. In the present case, the Industrial Tribunal has held that the employer has violated Section 25F. If so, the order of termination is bad in law. It has to be struck down. In the present case, it has been struck down. However, the Tribunal had refused to grant any relief on the ground of delay. The Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25F of the Industrial Disputes Act, 1947.

In Sapan Kumar Pandit v. U.P. State Electricity Board and Ors. (2001) 6 SCC 222), it has been held, vide para 15, as follows:

> **"There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanized by the workmen or the Union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. In this case, when the Government have chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing**

down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted at paragraph 6 as follows:

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) the position was reiterated as follows: (at para 17)

> **"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in M/s. Shalimar Works Ltd. v. Their Workmen (supra) (AIR 1959 SC 1217), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in M/s. Shalimar Works Limited v. Their Workmen (supra) (AIR 1959 SC 1217), In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others (supra) AIR 2000 SC 839, a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Sammanta and others v. Union of India and others (supra) (1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the**

appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees Under P&T Department v. Union of India (supra) (AIR 1987 SC 2342), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay."

The above position was highlighted recently in Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. Their Workmen represented by Rashtriya Colliery Mazdoor Sangh (2006 (1) Supreme 282) and Chief Engineer, Ranjit Sagar Dam & Anr. v. Sham Lal (2006(9) SCC 124).

In the aforesaid background, we would have normally set aside the award of the Labour Court and the High Court. But because of long passage of time, it would be inappropriate, particularly when appellant has not even offered any semblance of explanation for the delay.

The other contention of the learned Advocate General that it was necessary for the workman to complete 240 days to get the benefit of section 25 (G) and (H) of the Act is also untenable.

The Hon'ble Supreme Court in ***Central Bank of India Versus S.Satyam and others,*** (1996) 5 SCC 419 has held that to get the protection of section 25 G as well as section 25 H of the Act, the workman need not complete 240 days. Their Lordships have held as under:

"The plain language of Section 25-H speaks only of reemployment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of 'retrenchment' given in section 2 (oo).

Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman…who has been in continuous service for not less than one year". Thus, section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman…who has been in continuous service for not less than one year. It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F."

Consequently, there is no merit in the writ petition and the same is dismissed. The award dated 1.10.2005 passed by the Labour Court-cum-Industrial Tribunal, Dharamshala is upheld. The interim order dated 17.10.2006 is vacated. The employer is directed to reinstate the petitioner within a period of 8 weeks from today with all consequential benefits as directed by the Labour Court vide award dated 1.10.2005. There shall be no order as to costs.

(Rajiv Sharma), Judge

October 26, 2007
Awasthi